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DEPARTMENT OF
FINANCIAL INSTITUTIONS

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF FINANCIAL INSTITUTIONS

DEPT. OF FINANCIAL INSTITUTIONS,)
COMPLIANCE DIVISION,)
) Docket No. 03.06-097124J
Petitioner,)
)
v.)
) TDFI No.: 07-64-C
HOME REALTY COMPANY OF MEMPHIS, INC.,)
)
Respondent.)

AGREED ORDER

This matter is before Joyce Grimes Safley, Administrative Judge, assigned by the Tennessee Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner").

It appearing that the parties have agreed to resolve this contested case by the entry of this Agreed Order, and that in support thereof the parties make the following representations, as evidenced by the signatures of their authorized representatives and attorneys below:

I. This matter constitutes a "contested case" within the meaning of Tenn. Code Ann. § 45-5-102(3), and both the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Chapter 1360-4-1 of the Official Compilation Rules & Regulations of the State of Tennessee, are applicable to this matter.

2. Tenn. Code Ann. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter, "Department") is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Tennessee Residential Lending, Brokcrage and Servicing Act of 1988, Tenn. Code Ann. §§ 45-13-101, *et seq.* (hereinafter, "Mortgage Act"), and any regulations promulgated thereunder.

4. The Petitioner is the lawfully designated representative through which the Commissioner regulates mortgage lenders and the business of mortgage lending in this state.

5. The Respondent is a for-profit Tennessee corporation whose principal office is located at 3412 Park Avenue, Memphis, Tennessee 38111. The Respondent was incorporated on or about April 1, 1991, and the Respondent's corporate identification number is 0238830.

6. Charles E. Moore is president of the Respondent and is the majority shareholder.

7. The Respondent has never been authorized by the Department to do business in this state as a mortgage loan lender, mortgage loan broker, or mortgage loan servicer.

8. On July 26, 2007, the Department's Consumer Resources Division received a written complaint from a Tennessee consumer who borrowed money from the Respondent pursuant to an alleged mortgage loan transaction.

9. In response to the consumer complaint, the Petitioner performed an investigation (hereinafter, "Investigation") of the Respondent's business by gathering and examining several loan-related documents.

10. Pursuant to the Investigation, the Petitioner discovered information indicating that the Respondent had made at least nine (9) loans secured by residential real property between June 14, 2006 and June 8, 2007.

11. On or about October 8, 2007, the Commissioner issued an Emergency Cease and Desist Order (hereinafter, "Emergency Order") pursuant to Tenn. Code Ann. §§ 45-1-107(a)(4) and (c) and 45-13-116, in which the Commissioner made a finding that the Respondent had violated Tenn. Code Ann. §§ 45-13-103(a), 45-13-105, and 45-13-106(a) by making nine (9) mortgage loans while not licensed by the Department to do so and while not carrying the requisite bond or letter of credit. Also, in the Emergency Order, the Commissioner ordered the Respondent to immediately cease and desist from engaging in the business of mortgage lending in this state, including but not limited to, entering new mortgage loan agreements or initiating foreclosure proceedings against its customers who have defaulted or who will default on their obligation.

12. The nine (9) mortgage loans referenced in the Emergency Order are as follows (using the borrower's initials rather than full names):

(1) A loan of \$16,500.00 on June 14, 2006 to a borrower with the initials A.A. (hereinafter, "Loan 1")

(2) A loan of \$8,244.88 on August 24, 2006 to a borrower with the initials T.F. (hereinafter, "Loan 2")

(3) A loan of \$14,150.93 on August 24, 2006 to a borrower with the initials B.M. (hereinafter, "Loan 3")

- (4) A loan of \$8,492.87 on Dec. 14, 2006 to a borrower with the initials B.W. (hereinafter, "Loan 4")
- (5) A loan of \$10,497.52 on Feb. 28, 2007 to a borrower with the initials K.P. (hereinafter, "Loan 5")
- (6) A loan of \$6,308.55 on March 19, 2007 to a borrower with the initials D.D. (hereinafter, "Loan 6")
- (7) A loan of \$22,000.00 on April 20, 2007 to a borrower with the initials C.G. (hereinafter, "Loan 7")
- (8) A loan of \$10,960.96 on June 4, 2007 to a borrower with the initials T.R. (hereinafter, "Loan 8")
- (9) A loan of \$8,000.00 on June 8, 2007 to a borrower with the initials A.G. (hereinafter, "Loan 9")

13. On or about October 26, 2007, the Commissioner timely received from the Respondent's retained counsel an "Appeal and Request for Hearing in Response to the Commissioner's Emergency Cease and Desist Order," by which the Respondent requested a hearing on, and contested the findings contained in, the Emergency Order.

14. On or about November 2, 2007, the Petitioner filed with the Tennessee Secretary of State's office a "Motion Requesting the Assignment of an Administrative Judge to Conduct a Contested Case, and to Promptly Schedule a Pre-Hearing Conference on the Commissioner's Emergency Cease and Desist Order," which was granted, thus transferring this case to the Tennessee Secretary of State's Administrative Procedures Division to be heard by Judge Safley.

15. On or about November 5, 2007, the Petitioner served the Respondent with a "Notice of Opportunity for a Hearing and of the Rights of the Respondent" and a "Notice of Charges" (hereinafter, "Notice of Charges") in the above-captioned case.

16. The Petitioner, in its Notice of Charges, alleged that the Respondent violated the Mortgage Act by making the nine (9) mortgage loans identified in paragraph twelve (12), above, while not licensed as a mortgage lender by the Department, in violation of Tenn. Code Ann. § 45-13-103(a).

17. The Petitioner also, in its Notice of Charges, alleged that Loan 7 is a “high cost home loan,” as defined in the Tennessee Home Loan Protection Act, Tenn. Code Ann. § 45-20-101, *et seq.* (hereinafter, “THLPA”), and that the Respondent committed six (6) acts and practices prohibited by Tenn. Code Ann. § 45-20-103 in regards to the making of said loan.

18. As relief, the Petitioner, in its Notice of Charges, requests an order directing the Respondent to pay civil monetary penalties for violating the Mortgage Act at Tenn. Code Ann. § 45-13-103(a) by making nine (9) mortgage loans without the benefit of a license issued by the Commissioner, to refund any and all interest and fees collected on any and all loans made in violation of the Mortgage Act, to release any deeds of trust that grant the Respondent a security interest in real estate pursuant to any and all mortgage loans made by the Respondent in violation of the Mortgage Act, and to pay civil monetary penalties for violating the THLPA at Tenn. Code Ann. § 45-20-103 by committing various prohibited acts and practices in regards to the making of a high-cost home loan.

19. The Respondent agrees that the nine (9) alleged mortgage loans referenced in paragraph twelve (12), above, are each obligations represented by promissory notes identifying the Respondent as “lender,” and that all such notes are or were secured by a deed of trust over the borrower’s primary residence.

20. In the interests of cooperation, and to avoid further costs associated with administrative and judicial proceedings with respect to this matter, the Petitioner and the Respondent desire to settle this litigation by Agreed Order.

21. The Petitioner, having been shown to its satisfaction that Loan 7 was for business purposes, and not for personal, family, or household purposes, agrees that said loan does not fall under the Department's regulatory authority, and was therefore not made in violation of the Mortgage Act at Tenn. Code Ann. § 45-13-103(a) or the THLPA at Tenn. Code Ann. § 45-20-103.

22. The Respondent, without admitting or denying any wrongdoing, hereby consents to the following:

- (1) To pay to the Department a civil monetary penalty in the amount of twelve thousand dollars (\$12,000.00);
- (2) In regards to Loan 1, to refund to the borrower, identified herein by her initials, A.A., the sum of three thousand seven hundred and twenty-three dollars and ninety-five cents (\$3,723.95), which represents the total of all interest and fees collected pursuant to said loan;
- (3) In regards to Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, to apply any and all of the interest collected, which the Respondent represents to the Petitioner as totaling one thousand three hundred and eighty one dollars and seven cents (\$1,381.07), towards the outstanding principal on said loans/obligations so as to reduce the amount still owed by the borrowers on the loans/obligations where interest has actually been collected;
- (4) Also in regards to Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, to cease and desist from any further collection of interest, which would otherwise total thirty thousand nine hundred and sixty dollars and twenty-six cents (\$30,960.26) upon maturity of the loans/obligations; and,
- (5) Also in regards to Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, to reform, amend, or otherwise alter the promissory note relative to each loan/obligation so as to reflect that said notes

are for principal only, that the borrower has no obligation to pay any interest, and that any monies heretofore collected as interest shall be applied towards outstanding principal; and to additionally provide the Petitioner with copies of said reformed, amended, or altered notes; and,

- (6) Pay any and all costs associated with this litigation that may be assessed by the Tennessee Secretary of State, Administrative Procedures Division, to a maximum of five hundred dollars (\$500).

23. The parties agree that the Respondent may continue to collect any outstanding principal on Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, but that the notes representing said loans may not be sold or transferred to a third party.

24. The Petitioner agrees to cease further prosecution of, and deem concluded, its administrative action brought against the Respondent for violations of the Mortgage Act at Tenn. Code Ann. § 45-13-103(a), specifically, in regards to any loans/obligations secured by residential real property closed prior to entry of the Commissioner's Emergency Order (whether or not said loans/obligations are specifically referenced herein).

25. It is understood and agreed to by the Respondent that while this Agreed Order constitutes a final settlement of the administrative enforcement action brought by the Petitioner as referenced in paragraph twenty-four (24), above, it in no way precludes proceedings by or on behalf of the Petitioner for acts and/or omissions not specifically addressed herein, to include acts and/or omissions constituting violations of the Mortgage Act occurring after entry of the Commissioner's Emergency Order, and acts and/or omissions constituting violations of law outside the Mortgage Act that are within the Commissioner's jurisdiction.

26. It is understood and agreed to by the Respondent that, by entering into this Agreed Order, the Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Agreed Order.

27. It is further understood and agreed to by the Respondent that, by entering into this Agreed Order, the Respondent is allowing Judge Safley to enter the order without further process. In the event this Agreed Order is not entered for any reason, it will be of no force or effect for either party.

28. Based upon the foregoing agreement and representations, and for good cause shown to me,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

a. That, within thirty (30) days of the effective date of this order, the Respondent shall pay to the Department a civil monetary penalty in the amount of twelve thousand dollars (\$12,000.00);

b. That, in regards to Loan 1, and within thirty (30) days of the effective date of this order, the Respondent shall refund to the borrower, A.A, the sum of three thousand seven hundred and twenty-three dollars and ninety-five cents (\$3,723.95);

c. That, in regards to Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, the Respondent shall apply any and all of the interest collected, totaling one thousand three hundred and eighty one dollars and seven cents (\$1,381.07), towards the outstanding principal on said loans/obligations so as to reduce the amount still owed by the borrowers on the loans/obligations where interest has actually been collected;

d. That, in regards to Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, the Respondent shall cease and desist from any further collection of interest, which would otherwise total thirty thousand nine hundred and sixty dollars and twenty-six cents (\$30,960.26) upon maturity of said loans/obligations;

e. That, in regards to Loan 2, Loan 3, Loan 4, Loan 5, Loan 6, Loan 8, and Loan 9, and within thirty (30) days of the effective date of this order, the Respondent shall reform, amend, or otherwise alter the promissory notes relative to each in the manner required by sub-paragraph five (5) of paragraph twenty-two (22), above, and shall then forthwith provide the Petitioner with a copy of each reformed, amended, or altered note;

f. That the Respondent shall pay any and all costs associated with this litigation that may be assessed by the Tennessee Secretary of State, Administrative Procedures Division up to five hundred dollars (\$500), with the remainder of such costs to be paid by the Petitioner;

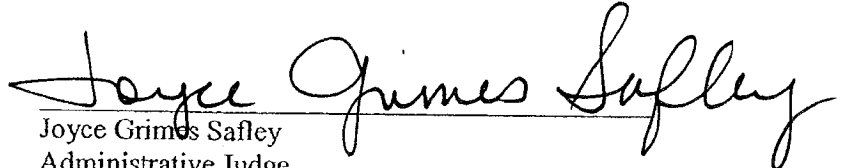
g. That the Respondent shall strictly comply with all of the terms and conditions of this Agreed Order and henceforth, shall strictly comply with any and all laws applicable to Title 45 (Banks and Financial Institutions);

h. That this Agreed Order represents the complete and final resolution of, and discharge with respect to, the administrative action brought by the Petitioner against the Respondent, subject to the terms contained herein, especially with regards to paragraphs twenty-four (24) and twenty-five (25), above; and,

i. That the Commissioner's Emergency Order issued on October 8, 2007 is no longer needed and is hereby vacated and set aside.


This Agreed Order **ENTERED** and effective this _____ day of _____,

2008.

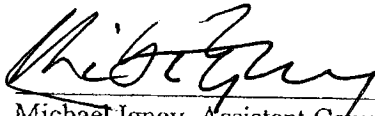

Joyce Grimes Safley
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this

27th day of June, 2008.

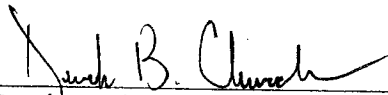

Thomas Stovall, Director
Administrative Procedures Division

AGREED ORDER APPROVED AND ENTRY REQUESTED BY:



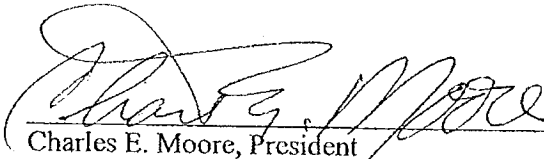
Michael Igney, Assistant Commissioner
Compliance Division
Tennessee Department of Financial Institutions
414 Union Street, Suite 1000
Nashville, Tennessee 37219
(Tel) 615-741-3186, (Fax) 615-532-1018

6-26-08
Date



Derek B. Church, Esq. (BPR #024946)
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Tenn. Dept. of Financial Institutions
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06/26/08
Date



Charles E. Moore, President
Home Realty Company of Memphis, Inc.
3412 Park Avenue
Memphis, Tennessee 38111

24 June 2008
Date



Richard J. Myers, Esq.
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Apperson, Crump and Maxwell, PLC
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Memphis, Tennessee 38119-3972

25 June 2008
Date